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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,204	07/31/2003	James E. Selis	1142-001	2183

25215 7590 03/06/2007  
DOBRUSIN & THENNISCH PC  
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PONTIAC, MI 48342

EXAMINER
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TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	03/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/631,204

Applicant(s)

SELIS, JAMES E.

Examiner

Melanie Tyson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 61-80 is/are pending in the application.
- 4a) Of the above claim(s) 80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61 is/are rejected.
- 7) ☒ Claim(s) 61-79 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to applicant's amendment received on 24 January 2007.

#### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species:

- I. Species I depicted in Figure 16F, having a common intermediate segment joining the first and second apex.
- II. Species II depicted in Figure 16G, having first and second arc segments.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

2. During a telephone conversation with James M. McPherson on 20 February 2007 a provisional election was made without traverse to prosecute the invention of Species II, claims 61-79. Affirmation of this election must be made by applicant in replying to this Office action. Claim 80 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Quayle Action***

3. This application is in condition for allowance except for the following formal matters:

##### **Claim Objections:**

Claims 61, 77, 78, and 79 are objected to because of the following informalities: they contain typographical errors. In claim 61 (lines 10 and 13),

change "projects" to --project--. In claim 77 (lines 2, 4, and 5), change "devise" to --device--, "form" to --from--, "itself" to --themselves--, and insert the term --state-- between the phrases "their relaxed" and "and engage tissue." In claims 78 and 79 change "unfolds" to --unfold--. Appropriate correction is required.

**Claim Rejections - 35 USC § 112:**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is directed towards the paragraph "the first ends of the first and second arc segments projects in a direction away from the second ends of the first and second arc segments with respect to the clip axis." It is unclear what is meant by the phrase "with respect to the clip axis." It is recommended that this phrase be removed from the claim such that it becomes clear that applicant is claiming that the first ends project in a direction away from the second ends.

***Allowable Subject Matter***

4. Claims 62-79 are objected to as being dependent upon a rejected base claim 61. Claims 61-79 would be allowable if rewritten or amended to overcome the objections and rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
5. The following is a statement of reasons for the indication of allowable subject matter: The inclusion of the limitation the first ends of the first and second arc segments

project in a direction away from the second ends of the first and second arc segments.

This limitation is included in all the claims and is not found in the prior art references.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoyns et al. (Patent No. 6,766,186 B1) discloses a post biopsy tissue marker (Figure 14). It is noted that the first ends (66) of the first (61) and second (62) arc segments project in a direction *towards* the second ends (66) of the first (61) and second (62) arc segments, therefore, Hoynes et al. does not read on claim 61.

### ***Conclusion***

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213. A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Friday 7:30 a.m. - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson *MT*  
February 20, 2007

*[Signature]*  
ANH TUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER

*3/1/07.*